EDITOR'S NOTE

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85-191 (1)

No.

Supreme Court, U.S.
FILED
JUL 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term,

ERNEST R. ZERMAN and EVELYN ZERMAN

Appellants,

vs.

AVANT GARDE CONDOMINIUM ASSOCIATION,INC.,

Plaintiff-Appellees,

vs.

HALDALE CORP, DAVIDSON CORP, CYNTHIA CORP, MELCO CORP, ELROD CORP, SYDNEY WOLOFSKY,MEL SCHUSTER, JACK AXELROD, KENNETH WOLOFSKY, SABINA WOLOFSKY, ESTHER WOLOFSKY, PETER WOLOFSKY, RUTH WOLOFSKY,

Defendants-Appellees.

JURISDICTIONAL STATEMENT

Ernest R. Zerman and Evelyn Zerman
Pro Se Appellants
2049 Ocean Dr.#1403
Hallandale, Fl 33009
(305) 456-1404

QUESTIONS PRESENTED

1. Whether it is violative of 1st, 5th, 14th Amendments of U.S. Constitution and Article 1, Section 21 of Florida Constitution, when appeals to Florida Supreme Court under Article V, Section 3(b)(1)-The supreme court SHALL hear appeals from decisions of district courts of appeal (DCA) declaring invalid a state statute; or under Article V, Section 3(b)(3)-MAY review any decision of a district court of appeal that expressly construes a provision of the state of federal constitution; for such right to appeal to Florida Supreme Court on constitutional issue considered by DCA be "Cut Off", see Jenkins v. State, 385 So.2d 1356 (Fla.1980), by district court of appeal rendering a Per Curiam Affirmed (PCA) decision WITHOUT OPINION. (under Rule 15.1.(a) question comprises,whether construction of federal constitution can be made discretionary, subject to whether or not DCA writes an opinion.)

QUESTIONS PRESENTED

2. Whether Florida's Supreme Court holding in Fleeman v. Case, 342 So.2d 815 (Fla.1977), that 711.236 codified as FSA 711.231,Fla. Stat.(1975), now FSA 718.401(8), retroactive application invalid as impairing obligation of contract under Article 1, Section 10 of both the United States and Florida Constitutions; is violative of the 10th and 14th Amendments for the reasons that, despite the Contract Clause's being facially absolute, Contract Clause's prohibition of any state law (here FSA 718.401(8)) impairing the obligation of contracts, MUST BE ACCOMMODATED to the State's inherent police power to safeguard the vital interests of its people and, as held in Amoco v. Jicarilla Indian Tribes, 455 U.S.130, 147:"CONTRACTUAL ARRANGEMENTS REMAIN SUBJECT TO SUBSEQUENT LEGISLATION BY THE PRESIDING SOVEREIGN."

3.Where Zermans, not plaintiffs nor defendants, without hearing, Whether, Court violated DUE PROCESS by ordering SHERIFF SALE.

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JURISDICTIONAL STATEMENT

Prefatorily-EQUAL JUSTICE UNDER LAW SHOULD NOT BE SACRIFICED TO EXPEDIENCY OF REDUCING FLORIDA SUPREME COURT'S WORK LOAD.

Appellants appeal from the final order of Supreme Court of Florida, entered May 1, 1985, case No. 66,709, denying Motion to Reinstate Summary Dismissal of Non-Discretionary by Sid J. White, Clerk of the Court, and its judgment entered previously by Clerk, only on basis that District Court of Appeal decision Per Curiam Affirmed WITHOUT OPINION, "DID NOT DECLARE INVALID a state statute or a provision of the State Constitution,... appeal is hereby dismissed subject to reinstatement if jurisdiction is established within 15 days. See Art.V,Section 3(b)(1).

Appellants appeal from final order of Supreme Court, entered May 20, 1985, No. 66,800, Zerman v. Sid J. White, Clerk of Supreme Court, Mandamus Petition denied(Ap.D)

This is a case of far reaching effect and importance and probable jurisdiction should

be noted because:

(a) The Supreme Court of Florida, unconstituticnally, in case of Jenkins v. State, 385 So.2d 1356(Fla.1980), holds that Art. V, Section 3(b)(1) & (3) were enacted:

> "..that access to the Supreme Court was being "cut off", and that the district courts of appeal would be the only and final courts of appeal in this state. WITH REGARD TO REVIEW BY CONFLICT CERTIORARI OF PER CURIAM DECISIONS RENDERED WITHOUT OPINION, THEY ARE ABSOLUTELY CORRECT. .....
>
> "Accordingly, we hold...Supreme Court of Florida lacks jurisdiction to review per curiam decisions...rendered without opinion, when the basis for such review is alleged conflict of that decision WITH A DECISION...OF THE SUPREME COURT.

(b) Probable jurisdiction, also, should be noted, in light of the Substantial legitimate governmental interest served by retroactivity of FSA 718.401(8)(711.236) which based on Public Welfare, prohibits enforcement of Escalation clauses in Condo Rec Leases(same provisions in Condo Abuse Relief Act,28USC 3601). Florida Supreme Court in Fleeman v. Case,342 So.2d 815(1977) held 711.236 inapplicable to contracts antedating it.

LIST OF PARTIES

In addition to the parties named in the caption, a party to proceeding below was:

THE CLERK OF THE SUPREME COURT OF FLORIDA.

OPINIONS BELOW

The May 1, 1985 decision of Supreme Court of Florida, denying reinstatement of appeal of Zermans, appears as Appendix A.

Appendix A.1 is copy of letter from Clerk of Supreme Court dated 5/13/85, stating that rehearing is not permissible on reinstatement denial.

Florida Supreme Court by form letter sent out 3 days after Zermans filed their appeal, which letter is dated 3/18/85 in first paragraph states:

"It appearing to the Court that it is without jurisdiction, the Petition for Review (appeal was filed not petition) is hereby dismissed and NO MOTION FOR REHEARING WILL BE ENTERTAINED BY THE COURT.

2nd para." It appearing to the Court that the District Court of Appeal, Fourth District

did not declare invalid a State Statute or a provision of the State Constitution, and that therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution. Being Appendix B hereof.

Appendix C is 'PER CURIAM AFFIRMED' decision of 4th District Court of Appeal, dated 1/4/85, WITHOUT AN OPINION, which was the basis of Clerk's Dismissal of Zermans' appeal, ONLY because it did NOT HAVE AN OPINION.

The Florida Supreme Court on May 20, 1985 DENIED Zerman's Petition for Writ of Mandamus against SID J. WHITE, Clerk of Supreme Court, being Appendix D hereof.

Appendix E.1 is Notice of Appeal sent to Supreme Court of Florida, mailed 7/1/85, filed 7/8/85 in Suprme Court cases Nos. 66,709 and 66,800, Notice of Appeal to U.S.Supreme Court.

Appendix F is exact copy of Notice of Sheriff Sale pursuant to an Order of Foreclosure in Trial Case No.81-6024 in which case Zermans were neither plaintiffs nor defendants and were denied Motion to Intervene and Denied Motion for Summary Judgment on basis of FSA 718.401(8) rendering Rec Lease void, and denied on 12/14/82 their objection to reasonableness of Settlement, but despite not having any hearing, their home 1403, was put up for Sheriff Sale.

Appendix G.1 is Intervention Motion by Zerman (R67-69 filed 12/1/82 to void Rec Lease under FSA 718.401(8). Denied by Judge Lee in 81-6024 on 12/14/82 Order (R 85-87).

Complaint in case No.81-6024, putting in issue constitutionality of Fleeman v. Case and retroactive application of FSA718.401(8) is Appendix H.1

Appendix I.1 is Purchase Agreement (R31-61), Approved by Judge Lee 12/14/82 (R85-87), Objected to by Zerman as being void purchase as Rec Lease void under FSA 718.401(8).

JURISDICTION

This is an appeal from final judgment of Supreme Court of Florida, entered 5/1/85, dismissing appellants Motion to Reinstate appeal, appearing as Appendix A hereof.

The Supreme Court of Florida on 3/18/85 by Sid J. White, in the name of the Court, summarily dismissed Zermans appeal, both Non-Discretionary and Discretionary, subject to reinstatement if Motion is filed within 15 days, citing Article V, Section 3(b)(1) of Florida Constitution, Appendix B.

Appeal by Zermans to Florida Supreme Court, filed 3/12/85, involved the Constitutionality of Florida Supreme Court Case, Fleeman v. Case, 342 So.2d 815(Fla.1977), which on basis of 'Contract Clause' of both U.S. and Florida Constitution, nullified the retroactive application of Florida Statute 718.401(8) replacement of FSA 711.236, which statute outlawed 'Escalation Clauses in Condo-Recreational Leases' under 10th Amendment.

The 3/18/85 Dismissal, subject to reinstatement by Motion, Appendix B, summarily dismissed appeal, because 4th District Court of appeal, rendered on 1/4/85, decision, Appendix C,'PER CURIAM AFFIRMED' WITHOUT AN OPINION. See, Jenkins v. State, 385 So.2d 1356 (Fla.1980) which mandates such summary dismissals to "cut off" access to Supreme Court of Florida, violative of 1st Amend.

On May 20,1985, Appendix D, in companion case No. 66,800, petition for Writ of Mandamus, Sid J. White, Clerk of Supreme Court, Respondent, Petition was denied,

On July 1, 1985, Notice of Appeal was filed in Florida Supreme Court in cases No.66,709 and NO.66,800. Certified to Court on 7/8/85.

This Court has jurisdiction of this appeal by virtue of 28 U.S.C. 1257(2) and 1257(3). See, Mayer v. City of Chicago(1971) 404 U.S. 189; Plyler v. Doe, 457 U.S.(1982) and Merrion v. Jicarilla Tribe,455 U.S.145(1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Constitution Article V,

SECTION 3-Supreme Court.-

(b) JURISDICTION.-The supreme court:

(1) Shall hear appeals ...from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution , or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or the supreme court on the same question of law.

Florida Statute 711.236, as created by Ch. 75-61, Laws of Florida (now codified as 711.231,Fla.Stat.(1975) currently FSA718.401(8): "711.231 Escalation clauses in leases for recreational facilities or management con-

tracts for condominiums prohibited.

-It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in leases for recreational facilities or other commonly used facilities serving condominiums ..., and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or management contract which provides that the rental under the lease or fee ...shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index

Fla.Const.Art.1,Section 21: Justice shall be had WITHOUT SALE, DENIAL, OR DELAY.

U.S.Constitution Amendment I: People have right to Petition (access to Courts) for redress of grievances.

U.S.Constitution Amendment V and XIV: No person shall be deprived of life, liberty or property without due process of law or denied the equal protection of the laws.

STATEMENT OF THE CASE

The pro se appellants, Ernest R. Zerman and Evelyn Zerman (hereinafter 'Zermans'), neither plaintiffs nor defendants in trial case No.81-6024 in Broward County Circuit Court, RAISED THE QUESTION of the constitutionality of Fleeman v. Case, 342 So.2d 815 (Fla.1977) which ruled Section FSA 711.236 now FSA 718.401(8) outlawing escalation clauses in Condominium Recreational facilities leases, is inapplicable to contracts which antedate its enactment(1975), and Zermans continued to RAISE THIS QUESTION at issue throughout proceedings in trial court, district court of appeal and Supreme Court.

Zermans RAISED THE QUESTION of the constitutionality of Florida Supreme Court procedures under Article V, 3(b)(1) and 3(b)(3) and approved by Jenkins v. State, 385 So.2d 1356 (Fla.1980), which will be detailed in following paragraphs, on 4/2/85 when they filed Motion To Reinstate Appeal and when they filed

Petition For Writ of Mandamus, Sid J.White, Respondent, which was denied by the Supreme Court on May 20, 1985, Appendix D.

Following is a detailed statement of case and showing when Question was raised and way passed on by court.

A complaint was filed 3/30/81 (R 1-15) by appellee Avant Garde Condominium as plaintiff, in the 17th Circuit Court of Broward County, Florida, No.81-6024(Lee), against Haldale Corp and Wolofskys, et al, to Void Avant Garde 99 year Rec Lease, as being void under FSA 718.302(2) and FSA 718.401(8). First Count of Complaint is Appendix H hereof. Zermans are neither plaintiffs nor defendants in case.

On 12/1/82 (R 67-69), Zermans filed an Intervenor Motion, Moving for Partial Summary Judgment voiding Avant Garde Condominium Rec Lease's escalation clause under FSA 718.401(8) Appendix G.1.

On 12/1/82 (R 70-84) Motion made by Zermans ' NOT TO RATIFY SETTLEMENT' and Motion for Summary Judgment as escalation clause being Void under FSA 718.401(8). Court on 12/14/82 (R 85-87) DENIED both Motions.

12/14/82 Order also approved the settlement, which resulted in 3/7/83 Deed, Appendix J.3, whereby Avant Garde paid Kenneth, Peter, and Sydney Wolofsky, individually, the Lessor and Lessee of the Rec Lease $1,790,000 for Avant Garde Recreational Facilities, assessed at $239,370.00 .

As shown by Appendix I.2, all of the CONSIDERATION ABOVE assessed value of $239,370 was to AVOID THE PROVISIONS FOR INCREASE IN FUTURE RENTAL PAYMENTS, the escalation clause for 99 years tied to CPI, which were outlawed effective June 1975 under FSA711.236.

Although the Zermans were neither plaintiffs nor defendants in suit 81-6024, and they tried to intervene and objected to settlement and Moved for Summary Judgment on basis of Rec Lease being void under 718.401 (8), without a hearing, as shown by appendix F, trial court entered foreclosure Order and their homestead was put up for Sheriff Sale on 12/6/83.

Zermans filed an appeal to the 4th Distrct

Court of Appeal, No.83-2138, based on unconstitutionality of trial Courts proceedings, and RAISING QUESTION of constitutionality of Fleeman v. Case, supra, holding.

On 12/27/84, Zermans the appellants in No. 83-2138, Made a Cross Motion for Judgment Declaring Avant Garde Rec Lease VOID under FSA 718.401(8), for court to reverse Fleeman on the constitutional basis that it is untenable and violative of 10th and 14th Amendments.

On 1/4/85, the 4th District Court of Appeal , APPENDIX C filed following decision:

> Appeal from Circuit Court for Broward County,J.Cail Lee, Judge.
>
> 'PER CURIAM AFFIRMED.',WITHOUT AN OPINION.

Zermans, Pro Se, filed an appeal to Supreme Court of Florida, both Non-Discretionary and Discretionary under Art.V,3(b)(1)-(3) whereby they put in issue AND RAISED THE QUESTION of the constitutionality under U.S. and Florida Constitution of Fleeman.

As shown by Appendix B, both type of appeal

was dismissed, even though Federal constitutional questions were RAISED, on March 18, 1985, subject to being reinstated.(Rehearing)

On 4/2/85, Zermans filed Motion to Reinstate appeal RAISING THE QUESTION of Constitutionality of Art.V,3(b)(1) and (3)Dismissal ONLY because the 4th DCA made a PER CURIAM AFFIRMED decision WITHOUT AN OPINION thereby CUTTING OFF unconstitutionally Access to Court. On same date Zerman filed Mandamus Petition naming Sid J. White,Clerk,Respondent.

Appendix A, shows that on 5/1/85 Motion to Reinstate Dismissal was DENIED.

Appendix D, shows that on 5/20/85, Zermans Petition for Writ of Mandamus to have Court Order Sid J. White to reinstate Appeal, was Denied.

INTRODUCTION TO SUBSTANTIALITY OF QUESTION

This Court should take judicial notice from pertinent citations set forth below, which reflect reasons why the questions presented; namely, Unconstitutionality under 1st, 5th, 10th and 14th Amendments and under Florida's constitution of FLORIDA SUPREME COURT'S appellate procedures, see Rinaldi v. Yeager, 384 U.S.305, and Unconstitutionality of Florida's Supreme Court decision in Fleeman v. Case, 342 So.2d 815, are substantial.

These 99 year Condominium Recreational Facilities Recreational Leases ("Rec Lease") with escalation clauses tied to Consumer Price Index, were so inequitable and contrary to Public Policy and public welfare of the State of Florida and the entire nation that they resulted in enactment of Florida Statute old FSA 711.236, replaced by FSA 718.401(8), and Federal Condominium Abuse Relief Act of 1980, 15 U.S.C. Sect. 3601.

Appendix K is 7/25/85 Hallandale Newspaper Article showing that 40,000 citizens of Hallandale were unconstitutionally deprived of right to an appeal to the Supreme Court of Florida by a District Court of Appeal

"NO OPINION DECISION".

Publicly recorded facts show that Wolofsky Canadian developers of Avant Garde, were enriched by $1,500,000 by signing the 99 year Rec Lease, as both Lessee and Lessor, Appendix J, selling the Rec Lease to themselves for $10 on 12/31/79, Appendix J.2, and to complete the fraudulent scheme, have 278 Unit Owners pay the Wolofskys $1,790,000 for the lease which is void under FSA 718.401(8), as shown by Deed dated 3/7/83 recorded O/R Broward County pg $8261.50 Rev. Stamps, pertinent part of such Deed is J.3.

Appendix I and I.2 is para.8c, page 7 of PURCHASE AGREEMENT (R31-61) showing consideration as; for $1,790,000 Deed as:

"opportunity afforded buyer to avoid provisions in the long term lease for the INCREASE IN FUTURE RENTAL PAYMENTS."

TAX NOTICE/RECEIPT FOR BROWARD COUNTY 1982 REAL ESTATE & SPECIAL ASSESSMENT

TAXES DUE IF PAID IN	NOV	DEC	JAN	FEB	MAR
	4363.26	4408.71	4454.16	4499.61	4545.06

EX-TYPE	ESCROW CODE	MILLAGE CODE
		2553

ASSESSED VALUES
NON-EX 239370
[redacted]

TAXES LEVIED	
COUNTY	1221.36
SCHOOL	1592.43
SFWMD	91.92
S.HOSPITAL	499.40
PORT AUTH	89.43
S.BROW.PK.	239.37
HALLANDALE	811.15

82 1 1226 02 02000 34

SECOND AMENDED PLAT OF
SEMINOLE BEACH 15-19 B
TR 1 S 300 OF N 2750 LESS E 17
FOR ST RD & LESS PT IN AVANT
GARDE CONDO

P187

HALDALE CORP ET AL
2600 PARKVIEW DR
HALLANDALE FLA 33009

1226 02 02000 11-09-82 P13-02398 S

MAKE CHECKS PAYABLE TO - BROWARD COUNTY REVENUE COLLECTOR

87d8

17

TO LEFT IS 1982 TAX BILL FOR AVANT GARDE RECREATION FACILITIES SHOWING TRUE VALUE AS $239,370. FOR WHICH 278 UNIT OWNERS PAID $1,790,000, despite FSA 718.401(8).

QUESTIONS ARE SUBSTANTIAL

The questions presented by the actions of The Florida Supreme Court in Summarily, thru its clerk, dismissing all appeals, both Non-Discretionary and Discretionary, coming from District Courts of Appeal with Per Curiam AFFIRMED WITHOUT OPINION or specifically DECLARING INVALID A STATE STATUTE, which according to Judge Walden of 4th DCA is done in 1/3 of cases before 4th DCA, is such an invidious, unreasonable and unconstitutional procedure, as to require substantial review by the United States Supreme Court under 28 U.S.C. 1257.

The record will show that on 11/29/82, Zermans raised the question of constitutionality of Supreme Court's holding in Fleeman v. Case,342 So.2d 815 (Fla.1977); at 818:

> " Even were we to conclude that the Legislature intended retroactive application of this statute, we would be compelled to hold it invalid as impairing the obligation of contract under Art.I, Section 10 of both the United States and Florida Constitutions."

In trial case No.81-6024(Lee),17th Circuit

Broward County Florida (R 70-84)12/7/82, Zermans RAISED question, as intervenors, by Moving for Partial Summary Judgment to Void Avant Garde Condominium Rec Lease's escalation clause, alleging it was Void under FSA 718.401(8) and that Fleeman v. Case,342 So. 2d 815 were erroneous in invalidating the retroactive effect of FSA 711.236-718.401(8).

In Zermans' Brief and by Motion dated 12/26/84, in 4th DCA Case No.83-2138,Zermans RAISED the question of Invalidity of Fleeman by their Motion, e.g., page 7:

> " WHEREFORE, on basis of above and fact that Fleeman v. Case, 342 So.2d 815 is an unconstitutional abrogation of Florida's legislature's Police Power, Summary Judgment in favor of Zerman voiding the Escalation Clause of Avant Garde's Recreational Lease should be granted.
>
> Dated: Dec.26, 1984 _____"

Zermans filed this appeal from a determination by Supreme Court of Florida 5/1/85:

> " On consideration of the Motion to reinstate appeal filed by appellants,
> IT IS ORDERED by the Court that said Motion be and the same is hereby denied.

Zermans filed a Non-Discretionary appeal

under Article V, Section 3(b)(1) of Florida Constitution, which was summarily DISMISSED, before, any hearing of any kind by the Clerk 3 days after the filing of the appeal, ON A FORM LETTER, Appendix B, as follows:

> "It appearing to the Court that the DISTRICT COURT OF APPEAL, FOURTH DISTRICT, **DID NOT DECLARE INVALID A STATE STATUTE** OR A PROVISION OF THE STATE CONSTITUTION **THIS APPEAL IS HEREBY DISMISSED SUBJECT TO REINSTATEMENT IF JURISDICTION IS ESTABLISHED ON PROPER MOTION FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER.. SEE ARTICLE V, SECTION** 3(b)(1), Florida Constitution.

The above dismissal by the clerk is a violation of 1st (Access to Courts), 14th(Due Process and Equal Protection) Amendments and Florida Constitution Article 1, Sect. 21- THE RIGHT TO OBTAIN JUSTICE WITHOUT SALE, DENIAL, OR DELAY.

This dismissal, colloquially, is similar to "HANGING A MAN AND GIVING HIM 15 DAYS TO SHOW WHY HE SHOULD NOT HAVE BEEN HANGED."

See, Fuentes v. Shevin,407 U.S.79,82(1972),

> " That the hearing required by due process ...does not affect its root requirements that an individual be given an opportunity for a hearing BEFORE he is deprived of any significant property."

See, Hovey v. Elliot,17 S.Ct.841(1897)844:

> "Can it be doubted that due process of law signifies a right to be heard in one's defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true as it undoubtedly is, HOW CAN IT BE SAID THAT THE JUDICIAL DEPARTMENT-THE SOURCE AND FOUNTAIN OF JUSTICE ITSELF-HAS YET THE AUTHORITY TO RENDER LAWFUL THAT WHICH,IF DONE UNDER EXPRESS LEGISLATIVE SANCTION WOULD BE VIOLATIVE OF THE CONSTITUTION ...COURTS POSSESS THE RIGHT TO INFLICT THE VERY WRONGS WHICH THEY WERE CREATED TO PREVENT."

To show the violation of 1st amendment by Florida Supreme Court and its legislature, it is only necessary to cite from Jenkins v. State,385 So.2d 1356 (1980); at 1359:

> "...broadcast from one end of the state to the other THAT ACCESS TO THE SUPREME COURT WAS BEING "CUT OFF," and that the district courts of appeal would be the only and final courts of appeal in this state. With regard to review by conflict certiorari of per curiam decisions RENDERED WITHOUT OPINION, THEY WERE ABSOLUTELY CORRECT." . . . .
>
> " We hold...the Supreme Court of Florida lacks jurisdiction to review per curiam decisions of the several district courts of appeal of this state RENDERED WITHOUT

"OPINION...WHEN THE BASIS FOR SUCH REVIEW IS AN ALLEGED CONFLICT OF THAT DECISION WITH A DECISION ..OF THE SUPREME COURT."

Zermans' alleged in trial Court and in the 4th District Court of Appeal that the Supreme Court Case of Fleeman v. Case, supra, was in Conflict with the 10th and 14th Amend ments of the U.S.Constitution and Art. 1, Section 21 of Florida Constitution.

A substantial question for review requiring plenary consideration because ALL FLORIDA APPELLANTS SHOULD BE AFFORDED EQUAL APPELLATE RIGHTS TO APPEAL TO THE SUPREME COURT AND ACCESS TO THE SUPREME COURT, WHETHER OR NOT SUCH DECISION BY DISTRICT COURT OF APPEAL IS RENDERED WITH AN OPINION OR WITH OUT AN OPINION. SUCH A CLASSIFICATION HAS NO RATIONAL BASIS BUT IS AN INVIDIOUS DISCRIMINATION.

MAYER v. CITY OF CHICAGO,404 U.S.192,193:

" For"it is now fundamental that,once established..avenues of appellate review must be kept free of unreasonable distinctions THAT CAN ONLY IMPEDE OPEN AND EQUAL ACCESS TO THE COURTS."RINALDI V. YEAGER,384U.S.305.

"Therefore, "in all cases the duty of the State is to provide the indigent(in this case provide Zerman where we have a Per Curiam Affirmance Without an Opinion) as adequate and effective appellate review as that given appellants with funds(in Florida as adequate and effective review as given appellants where we have a Per Curiam Affirmance WITH OPINION.)

For the Clerk of the Court or the Supreme Court to differentiate between a PCA decision WITHOUT OPINION AND PCA DECISION WITH OPINION or when the issue has been presented, to treat differently an appellant whose appeal was decided by DCA DECLARING INVALID A STATE STATUTE AND A DECISION BY DCA NOT DECLARING INVALID A STATE STATUTE, even though the validity was passed upon, is an arbitrary and invidious denial of Equal Protection.

There is no rational or reasonable basis or legal basis for a District Court of Appeal to make a PCA with an opinion or WITHOUT one.

Foley v. Weaver, 177 So2d 221 (1975):

"There is no legal distinction between effect of per curiam decision without opinion and one supported by opinion".

What secret deliberations or challengeable facts or law, goes into District Court of Appeal Judges decision whether to write an opinion or not to write an opinion. Can Zermans appeal the fact that the Per Curiam decision does not have an opinion or does not 'DECLARE' that Fleeman v. Case did not erroneously invalidate FSA 711.236.

Although these PCA decisions WITHOUT OPINIONS or without DECLARING a statute INVALID, might reduce its workload, this procedure is patently and clearly in conflict with essential requirements of Constitutional law. See, Sotto v. Wainwright,601 F.2d 184: "Fundamental rights implicit in concept of ordered liberty include..access to the Courts."

The Equal Protection Clause requires more of a state law than non-discriminatory application within the class it establishes. McLaughlin v. State of Florida,379 U.S.184,189.

Equal Protection Clause also imposes a

requirement of some rationality in the nature of the class singled out. But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which classification is made. Baxstrom v. Herold,383 U.S.107,111. (note-what rational difference is there between a PCA with opinion and one without opinion.

I think the case of Evitts v. Lucey, 45 CCH S.Ct. Bull.P., is dispositive of the ISSUE OF SUBSTANTIALITY; pages 920,921:

> " Equal Protection", on the other hand, emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable. In cases like Griffin and Douglas, due process concerns were involved BECAUSE THE STATES INVOLVED HAD SET UP A SYSTEM OF APPEALS as of right BUT HAD REFUSED TO OFFER EACH DEFENDANT (here Florida refused to offer each appellant) a fair opportunity to obtain an adjudication on the merits of his appeal. Equal protection concerns were involved because the State treated a class of defendants (here class of appellants with PCA Without Opinion or without DECLARATON OF INVALIDITY) -indigent ones-differently for purpose OF OFFERING THEM A MEANINGFUL APPEAL.

SUBSTANTIALITY OF QUESTIONS 2, and 3.

The appellants present the following reasons why questions 2 and 3 are so substantial as to require plenary consideration by Court.

Encompassed in the issue on appeal, as applied to the factual situation including the fact that Zermans were neither plaintiffs nor defendants in trial case No.81-6024, is question whether Supreme Court, as held in Fleeman v. Case, 342 So.2d 815 (Fla 1977), may constitutionally nullify the retroactive application of FSA 718.401(8), previous 711.236 on the basis of the 'CONTRACT CLAUSE' of both Florida and U.S. Constitutions.

Supreme Court of Florida recognized that 718.401(8) was a legitimate exercise of States police power, and it is necessary to consider always that Avant Garde Condominium owes its existence to Condominium Act,711.

Appellants , pro se, contend that jurisdiction should be noted, as substantial and legitimate governmental interest is served by retroactivity of FSA 718.401(8), as applied to

Avant Garde 99 year 1974 Rec Lease Contract.

Florida Supreme Court holding in Fleeman, supra, expressly put in issue by INTERVENTION MOTION of 12/1/82 (R67-69) trial case No.81-6024, Appendix G.1 and G.2 TO VOID AVANT GARDE CONDO REC LEASE'S ESCALATION CLAUSE UNDER FSA 718.401(8), DENIED 12/14/82(R85-87) EXPRESSLY PUT IN ISSUE the invalidation and nullification of sovereign Police Power of Florida under 10th Amendment, making such power subordinate to the'Contract Clause'.

There are 1000s of Condo Home Owners and millions of dollars of Rec Lease Escalated Rents involved in these pre 1975 Rec Leases woth escalation clauses.

Since Zermans are neither plaintiffs nor defendants in trial case No.81-6024, and WERE NEVER AFFORDED AN OPPORTUNITY TO BE HEARD, denied intervention and denied their request for Summary judgment to void lease under 718.401(8), their 1st,14th and 10th Amendment rights were abrogated and they expressly put into issue in trial court, in

4th District Court of Appeals and Florida Supreme Court the invalidation of retroactive application of Fleeman, supra.

Appendix H.1 hereof, is Count I of Complaint (R 1-15) in 17th Circuit trial case No.81-6024(Lee), where invalidation of retroactive application of FSA 718.401(8) by Supreme Court's Fleeman decision, is expressly put into issue by Zermans, who requested to intervene (R 67-69) on 12-1-82, and by making Motion (R 70-84) on 12-7-82 for Partial Summary Judgment to Void Escalation Clause Tied To Consumer Price Index.

Paragraph 24 of Complaint is:

> "24. Sections 718.302(3) and 718.401(8), F.S. declare the public policy of the State of Florida to prohibit "inclusion or inforcement of escalation clauses in leases for recreation facilities" and the clauses have been statutorily "declared void for public policy.".
>
> "25. The lease contains a prohibited es- escalation clause (Article) which is void.

On 12-7-82 (R 70-84) Zerman made a Motion to Court NOT TO RATIFY SETTLEMENT as follows:

> "Ernest R. Zerman and Evelyn Zerman,owners of Avant Garde Condo Unit 1403, Move the

"NOT to ratify proposed settlement or to postpone such ratification until the Court adjudicates whether the ESCALATION CLAUSE in Avant Garde's Agreement for Recreation Facilities which contains automatic escalation tied to U.S. Consumer Price Index, increased rent of 48% put into effect 2-1-79, is VOID UNDER F.S.A. 718.401(8).

It is of paramount importance for this Court to always keep in mind, that a Condominium is a creature of statute and as such is SUBJECT TO THE CONTROL AND REGULATION OF THE FLORIDA LEGISLATURE.

Also, as stated in Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 145(1982) at 147-148:

" Contractual arrangements remain subject to subsequent legislation by the presiding sovereign, See, e.g.,Veix v. Sixth Ward B & L of Newark,310 U.S. 32; Home B & L Ass'n v. Blaisdell,290 U.S.398.

" Without regard to its source, sovereign power, even when unexercised, IS AN ENDURING PRESENCE THAT GOVERNS ALL CONTRACTS SUBJECT TO THE SOVEREIGN'S JURISDICTION."

General Rule Is That Private Contracts May Constitutionally Be Impaired by Valid Exercise of Police Power

Prospectively from June 1975, FSA 718.401 (8) was found to be a valid exercise of Florida's Police Power for the General Welfare.

Fleeman v. Case, under the present 'Law of the Case' is legally untenable and erroneous, since it bases its holding on 1975 case of Yamaha Parts Distributor v. Ehrman, 316 So.2d 557 (which has not been the law in the other 49 States since 1827),holding that it is a WELL ACCEPTED PRINCIPLE THAT VIRTUALLY NO DEGREE OF CONTRACT IMPAIRMENT IS TOLERABLE IN THIS STATE. Since Florida has been a State since early 1800's, the above holding in view of the 10th Amendment, is constitutional untenable protection of contracts.

U.S.Supreme Court recognized that states are not necessarily precluded from enacting valid measures to preserve the order, health and economic well-being of the community, despite the fact that such measures might impair the obligation of existing private contractural arrangements. Ogden v.Saunders(1827) 25 US 213, 6 L.Ed 606; Manigault v. Springs(1905) 199 US 473; Home Bldg. & L Assn v Blaisdell (1934) 290 US 398; Veix v Sixth Ward B & L(1940) 310 US 32; East New

York Sav.Bank v Hahn(1945) 326 US 230; United States Trust Co. v New Jersey(1977) 431 US 1; Allied Structural Steel Co. v Spannaus(1978) 438 US 234; and currently, Energy Reserve Group,Inc. v Kansas Power & Light Co., 103 S.Ct. 697 (1983), on escalation clauses.

Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State "to safeguard the vital interests of its people." Home B & L, supra, where the Court approved a Minnesota mortgage moratorium, even though the Statute retroactively impaired Contract Rights.

The Wolofskys, the Canadian developers,when they made the Rec Lease Contract, could not have reasonably expected to gain 48% escalation of rents in 5 years, on a 99 year contract, with escalation every 5 years on this Net, Net Lease. In determing the extent of the impairment, we are to consider whether industry has been regulated in the past. Century Village,Inc v Wellington,361 So.2d

128,133:

> "In Florida, condominiums are creatures of statute and as such are subject to the control and regulation of the Legis lature. That body has broad discretion to fashion such remedies as it deems necessary to protect the interests of the parties".

Also, Hudson Water Co. v. McCarter, 209 US 349,357: "One whose rights, such as they are, are subject to state restriction, and CANNOT REMOVE THEM FROM THE POWER OF THE STATE BY MAKING A CONTRACT ABOUT THEM." (1908).

Since Avant Garde's Rec Lease rents were escalated 48% in 1979, and Lease has 95 years to run, to year 2073, with 5 year escalations tied to CPI, the WINDFALL profit that Wolofsky would realize from this self dealing lease would be unconscionable and confiscatory. United States Trust Co., 431 US at 31, n.30, held: One legitimate state interest is the elimination of UNFORESEEN WINDFALL PROFITS. We have a NET, NET lease here.

Manigault v. Springs (1905) 199 US 473:

> "..there is wide discretion on the part of the legislature in determining what is and what is not necessary, WITH WHICH COURTS ORDINARILY WILL NOT INTERFERE.

Fleeman v. Case, sustaining, would exempt Wolofskys from any regulatory limitation of escalation until year 2073. Such limitation on Florida's Police Power cannot be permitted.

CONCLUSION: In light of the Substantial, legitimate governmental interest served by retroactive application of FSA 718.401(8) to Rec Lease Contracts executed prior to 1975; and the law and facts above, PROBABLE JURISDICTION SHOULD BE NOTED.

Dated:July 29,1985 Ernest R. Zerman

Ernest R. Zerman Pro Se
2049 Ocean Dr.#1403 Hallandale,Fl 33009

I, Ernest R. Zerman, hereby CERTIFY that on 7/29/85, I deposited copies of the foregoing JURISDICTIONAL STATEMENT, in U.S.Mail Box in Hallandale,Florida, with 1st class postage prepaid and properly addressed TO:

Robert L. Floyd, atty for Wolofskys,et al., One Biscayne Tower, Miami,Fl 33131

Richard Burton, atty for Avant Garde Condominium Ass'n,3510 Biscayne Blvd,Miami,Fl 33137.

Sid J. White, Clerk of Supreme Court of Florida, Supreme Court Building, Tallahassee Fl 32301-8167.

Ernest R. Zerman

(305) 456-1404 Ernest R. Zerman Pro Se